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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,973	08/29/2000	Norbert George Vogl	YOR920000532US1	9168

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HARRINGTON & SMITH, LLP
4 Research Drive
Shelton, CT 06484-6212

EXAMINER

BAROT, BHARAT

ART UNIT	PAPER NUMBER
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Robert J. Mauri
HARRINGTON & SMITH, LLP
4 Research Drive
Shelton CT 06484-6212

TECHNOLOGY CENTER 2100

In re Application of: Vogl, et al.)
Application No. 09/649,973)
Attorney Docket No. YOR920000532US1)
Filed: August 20, 2000)
For: METHOD OF DOING BUSINESS)
OVER A NETWORK BY)
TRANSMISSION AND)
RETRANSMISSION OF DIGITAL)
INFORMATION ON A NETWORK)
DURING TIME SLOTS)

**DECISION ON PETITION TO
WITHDRAW RESTRICTION
REQUIREMENT UNDER 37 CFR
§1.144**

This is a decision on the petition filed November 21, 2005 under 37 C.F.R. §1.144 and 37 C.F.R. §1.181 to withdraw an outstanding restriction requirement.

The petition is **DISMISSED AS MOOT**.

RELEVANT PROSECUTION HISTORY

- December 06, 2004 A response was filed in response to the Non-Final action mailed September 17, 2004. The response includes arguments against the art rejection with no amendment to claims 1-19
- April 22, 2005 A supplemental amendment was filed adding claims 20-22, claims 21-22 depend from independent claim 20.
- June 28, 2005 A Final action was mailed, including 1) election of claim 1-19 by original presentation, (2) withdrawal of claims 20-22 from consideration as non-elected due to the new claim language "predicting transmission time, priority, and cost based on a size and a network capacity" and "transmitting digital information based on the time, a source address, and an identification of a recipient" in these claims, and (3) rejection and response to applicant's arguments regarding claims 1-19.

July 19, 2005	A paper was filed requesting reconsideration of the restriction requirement.
July 28, 2005	An Advisory Action was mailed indicating the arguments were not persuasive; however there was no indication that the restriction requirement was held FINAL.
November 21, 2005	A formal Petition to withdraw the restriction requirement was filed along with a Notice of appeal.
November 30, 2005	An Appeal Brief was filed appealing the rejection of claims 1-19, claims 20-22 were indicated as withdrawn.
March 06, 2006	A Non-Final office action was mailed including 1) withdrawal of the Final Office action mailed June 28, 2005, 2) a new ground of rejection for claims 1-19 and indication that claims 20-22 being withdrawn.
May 24, 2006	An amendment was filed amending claims 1-19 and adding claims 23-27.
August 18, 2006	A Final action was mailed rejecting claims 1-19 and 23-27.
November 15, 2006	An RCE was filed including amendments to claims 1-19 and 23-27.
December 18, 2006	A Non-Final action following the RCE was mailed addressing claims 1-19 and 23-27.
April 18, 2007	An amendment was filed amending claims 1-19, 24, and 27 and canceling claims 23 and 26.
July 03, 2007	A Final rejection was mailed including 1) new ground of rejection of claims 1-19, 24, and 27 and 2) an Obvious Double Patenting rejection over US Patent No. 6,986,156.
September 04, 2007	A terminal disclaimer was filed disclaiming US Patent No. 6,986,156.
September 17, 2007	An advisory action mailed indicating the 1) withdrawal of the Obvious Double Patenting rejection against US Patent No. 6,986,156 and 2) response to applicant's arguments.
October 31, 2007	An RCE was filed further amending claims 1-19, 24, and 27.

REGULATIONS AND PRACTICE

37 C.F.R. § 1.143 states:

If the applicant disagrees with the requirement for restriction, he may request reconsideration and withdrawal or modification of the requirement, giving the reasons therefor. (See § 1.111). In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final, the examiner will at the same time act on the claims to the invention elected.

37 C.F.R. § 1.144 states:

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, **may petition the Commissioner to review the requirement** ... A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

37 C.F.R. § 1.145 states:

If, after an office action on an application, the applicant presents claims directed to an Invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in § § 1.143 and 1.144.

MPEP § 821.01 states:

Where the initial requirement is traversed, it should be reconsidered. If, upon reconsideration, the examiner is still of the opinion that restriction is proper, it should be repeated and made final in the next Office action. (See MPEP § 803.01.) In doing so, the examiner should reply to the reasons or arguments advanced by applicant in the traverse. Form paragraph 8.25 should be used to make a restriction requirement final.

DECISION


37 C.F.R. § 1.118(c) requires that an action by an examiner, to be properly petitionable, must be followed by a request for reconsideration, and a repeated action by the examiner. 37 C.F.R. § 1.144 states that the applicant may petition to the Commissioner after a Final requirement for the restriction.

In the above-identified application, the Advisory action dated July 28, 2005 did not indicate that the restriction was made Final. Furthermore, the Responses filed May 24, 2006 and subsequent communications fail to further pursue this issue. Thus the petition is **DISMISSED as PREMATURE and/or MOOT** for the time being.

The Office regrets the delay of this decision. If the applicant wishes to further pursue the petition, applicant should inquire the Finality of the restriction.

The application will be forwarded to the examiner for further consideration.

Any inquiry concerning this decision should be directed Kim Huynh whose telephone number is (571) 272-4147.



Jack Harvey, Director
Technology Center 2100
Computer Architecture, Software,
and Information Security